IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7383 OF 2002

1. Shri Mahadev Aba Manjare & Ors. .. Petitioners

Vs.

1. Shri Uttreshwar Machindra Manjare & Ors. .. Respondents

Mr. S.D. Thokade for petitioners.
Mr. D.B. Lonkar for respondent nos.1,2,4 and 5.

CORAM: B.H. MARLAPALLE, J.

Date : June 08, 2006.

P.C.:

1. Heard.

2. Rule. Respondents waive service.

3. By consent of the parties the Rule is taken up for final hearing forthwith.

4. In Regular Civil Suit No. 146 of 1990 filed before the learned Civil Judge, Junior Division at Barshi, the plaintiffs took out an application (Exh.59) for amendment of the plaint and the same was

opposed by the petitioners-defendants by filing say at Exh. 63. After hearing both the parties the learned 3rd Joint Civil Judge, Junior Division at Barshi was pleased to allow the amendment application Exh.59 vide his order dated 28/12/1999. The said order was challenged initially in Civil Revision Application No.522 of 2001 and the order was stayed. However, on account of the amendments in the Civil Procedure Code effected from 1/7/2002 the Civil Revision Application was dismissed as not maintainable and, therefore, this petition has been filed challenging the order dated 28/12/1999.

5. By the application at Exh.59 the plaintiffs sought four amendments, namely, (a) in clause 6 of the plaint, in line no.2, instead of word "defendant no.3", the word "plaintiff no.3" was to be added, (b) in clause no.7, line no.2, the dated "27/7/1989" was sought to be changed to "27/6/1989", (c) in clause no.7 the date of the written notice i.e. 27/7/1989 was sought to be changed to 27/6/1989 and (d) in clause no.10 of the plaint the date 27/7/1989 was sought to be changed to 27/6/1989.

6. Having heard the learned counsel for both the parties I am satisfied that the amendments sought to be made in terms of (a), (b) and (d) as above do not called for any interference and the trial court rightly allowed the same. However, it was not permissible for the plaintiffs to change the date of the notice that they purportedly issed and, therefore, the amendment allowed to that extent is unsustainable. The trial court rightly allowed the amendments in terms of the pleading that the plaintiffs offered to pay the money in the month of June instead of July and undoubtedly this amendment itself cannot be an evidence. The issue, whether it was made in June or July has to be proved by leading evidence.

7. In the result, the petition is partly allowed and the amendment allowing to change the date of the written notice from 27/7/1989 to 27/6/1989 is hereby set aside. Rule made partly absolute in terms of the above order. Trial of the suit is expedited. Writ to go forthwith.

(B.H. Marlapalle,J.)